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IN THE NINTH JUDICIAL DISTRICT COURT OF THE STATE OF NEVADA

IN AND FOR THE COUNTY OF DOUGLAS

DSM PARTNERS, LTD., a Colorado
Limited partnership

Case No.: 13-cv-0114

Plaintiff,

Dept. No.: 2

v.

METALAST INTERNATIONAL, LLC, a;
Nevada limited-liability company;
METALAST INTERNATIONAL, INC., a
Nevada corporation,
and DOES 1-10, inclusive,
Defendants.

RECEIVER'S FIRST STATUS REPORT

Pursuant to this Court's Order Granting Motion For Appointment of Receiver and Preliminary Injunction, the Receiver, James S. Proctor, hereby submits his first status report.

I, as Receiver, have operated the Receivership following appointment by the Court entered on April 25, 2013, upon the petition of DSM Partners, Ltd. ("DSM"), the lender to Metalast International, LLC ("Metalast, Company, or LLC"). DSM is the secured creditor of \$8,774,520.72 in principal and \$253,711.85 in accrued interest through March 1, 2013. *At 18% compounded annualized intests This only represents only about \$3.5M of principal versus the Semas \$10M of debt.*

1 As Receiver, I conducted a staff meeting with employees and management of the
2 Company on April 26, 2013 to communicate the Receivership, its procedures, and how
3 operations would continue and to explain its process and responsibilities, and the
4 limitations placed upon the Company because of the Receivership. I explained to the
5 employees the general financial condition of the Company. I also solicited observations
6 and suggestions from the employees and the management. Management, without Mr.
7 David Semas ("Semas") consisted of Mr. Jeff Mackinen, Senior Vice President of
8 Administration, Mr. Greg Semas, Senior Vice President of Operations, and Ms. Wendi
9 Fauria, Vice President of Accounting and Investor Relations ("management"). The
10 Company conducts its operations out of an approximate 12,000 square foot commercial
11 industrial facility in Minden, Nevada. Mr. Proctor made certain to tell employees the
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14 At the time the Receivership commenced the Company had failed to pay the
15 employees two payrolls approximating \$110,000 and the employee's health insurance
16 was in danger of being cancelled. In fact, the health insurance would have been
17 cancelled had the Receiver, from his own funds, not advanced approximately \$13,000
18 for payment. Once the initial loan advance from DSM was received 24 hours later the
19 Receiver was able to reimburse himself for the advanced funds. DCM, to date, has
20 advanced the Receivership \$250,000 in order to pay employee payroll and pay the
21 suppliers to bring their bills current. Because the Company uses a payroll service for its
22 payroll, it is current in its federal payroll tax obligations. According to the Company's
23 financial records the accounts payable liability to its trade vendors, suppliers, and some
24 employees totaled \$973,362.96. However, this amount is understated as will be outlined
25 below. Without the initial loan advance from DSM the business would have been forced
26 to close; payroll could not have been paid, the health insurance would have been
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1 cancelled and some critical suppliers could not have been paid. It was also discovered
2 several days later that another lender to the Company had previously obtained a
3 \$500,000 default judgment for its unpaid debt under a promissory note.

4 With sufficient rules, reporting, and oversight in place I have initially relied upon
5 management's assistance without the need for constant and continual on-site
6 supervision, and in order to minimize the costs of the Receivership. It is normal
7 procedure to minimize the disruption of normal operations, to the extent it can be, to
8 continue business without disruption to customers and to the employees while
9 determining if management and employees should be kept in place. Sometimes
10 management, with proper oversight, accountability, and procedures can be kept in place;
11 sometimes it is necessary to replace management. I have generally found
12 employees/staff qualified, diligent, and willing to cooperate and work as necessary to
13 keep the Company operating.

14 Upon commencement of such an engagement as this, there needs to be much
15 more direct and constant involvement by the Receiver as operations and finances are
16 evaluated, decisions need to be made, dealing directly with employees, vendors,
17 suppliers, and governmental authorities, interviewing parties of interest and those
18 affected by the Receivership, establishing procedures and oversight, determining the
19 reliability and competency of staff, employees and management. I am in the process of
20 reducing the direct time required, in order to reduce the costs of the Receivership. The
21 total hours that the Receiver has expended in this case is approximately 176 hours.
22 Because of the scope of work that is necessary and the concerns of costs of such I have
23 requested assistance from the Meiling's of DCM in researching records, contracts, sales
24 opportunities and discussing with staff their responsibilities and recommendations.
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1 However, as outlined below additional procedures and analysis needs to be performed
2 by the Receiver.

3 It became evident through the operation of only 1 week that monthly customer
4 revenue is not adequate to maintain operations as was structured and staffed. The
5 Receiver has worked with the management, employees, and DSM in order to develop
6 budgets and further ascertain the financial condition of the Company. Given the reduced
7 revenue, and hence reduced and inadequate cash flow for operations, it was determined
8 by the Receivership that a number of expenses had to be reduced, and that some staff
9 and management would need to be laid off. Three (3) employees have had to be laid off
10 and two (2) in senior management; Mr. Jeff Mackinen and Ms. Wendi Fauria were laid
11 off. Mr. Greg Semas chose to resign his position. The duties are being or have been
12 reassigned.
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15 The Receiver has spent a significant amount of time dealing with creditors
16 as some have not been paid for many months.

17 During review of the operations and the analysis of the financial condition of the
18 Company, the following was noted:

- 19 • Among the creditors that have not been regularly paid are the two landlords.
20 While there have been some partial payments of rent, unpaid rents date back to
21 March 2011. One landlord is owed approximately \$180,500. The other landlord
22 is owed approximately \$375,300. The Company's accounting records, financial
23 statements and tax returns understate this landlord's liability at \$144,472. The
24 rent to the two landlords is over \$12,000 per month, not including CAM charges,
25 and property taxes. There is a large amount of unused space.
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- Other creditors that have not been regularly paid and have outstanding balances are:
 - The Company's CPA firm (approximately \$160,000) with outstanding balances back to 2010. Thus, the CPA firm is not independent to the Company.
 - Attorneys that represented the Company in its SEC investigation (approximately \$124,000) with outstanding balances back to 2010.
 - Intellectual Property Attorney (approximately \$7,000).
 - Landlord settlement on abandoned space (\$20,000).
 - Outside consultants, some of which are former employees (approximately \$63,000).
 - Employee reimbursements.
 - A number of small trade creditor and vendors have not been paid for more than 90 days.
- Some suppliers had not been paid for over 30 days. Those suppliers are now current.
- In addition to their salaries and expense reimbursement, management was being paid \$37,200 in annual car allowance. There were also instances that in addition to the paid car allowance some management was continuing to charge local gas charges as well. The car allowance has been discontinued by the Receiver.
- Based upon the Company prepared financial statements and an analysis of the Company's tax returns:

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- The amount of monies that the approximate 1,000 members of the LLC have either contributed (or whose debt has been turned into equity) total more than \$95 million.
- The accumulated deficit (losses) for the LLC totals more than \$119 million.
- Within the past ten years, there were many years when salary expense exceeded the gross profit of the Company. Thus, there was a loss in the Company even before operating expenses.
- The Company paid health insurance for all employees, spouses and family.
- Despite that creditors, including landlords, were not being paid (some for more than 2 years), management continued to receive full salaries, car allowances and fringe benefits.
- There appear to be a large number of personal expenses charged to the Company's credit card. There appear to be other transactions of self-dealing as well, including the Employment Agreement with Mr. David Semas at a time that the Company could not afford such an agreement. These need to be investigated further.
 - A further example of the attitude of prior management can be illustrated by Mr. Greg Semas' refusal to surrender back to the Company the laptop computer and iPhone that are Company assets and were charged on the Company's credit card. He asserts that this was gifted to him by Mr. David Semas. Employees don't and cannot receive gifts from companies, employees are remunerated through compensation. There is no evidence that any purported transfer of a Company asset has been included in his income.

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- In addition both Greg Semas and Jeff Mackinen had been advanced \$10,000 each, more than three years ago, and those funds have never been reimbursed to the Company, nor has there been any interest accrued on those advanced amounts.

- A number of transactions and documents refer to the LLC (Metalast International, LLC) or Metalast International, Inc. interchangeably with very little consideration for the nuances of the differences. For example the Company's invoices are titled as Metalast International, Inc. ("MII") when they are clearly meant to be the Company's invoices – the LLC. There does not appear to be a proper differentiation between the entities and the names are used interchangeably. Even after the commencement of the Receivership a new patent that the Company (LLC) obtained, using Company employees was being listed as MII.
- Within the past year there were some months of large revenue/sales deposits, the Receiver is still researching and analyzing the subsequent disbursements.
- In March 2013, more than a month prior to the Receivership, DSM loaned the Company \$200,000. Subsequently, and prior to the Receivership, there were disbursements to Wendi Fauria totaling more than \$26,000 and an unexplained check to Greg Semas for \$8567.96. These are being further researched.

In some Receivership's, it is customary to further analyze transactions and review the financial condition and history of the subject entity. It is the Receiver's opinion that additional analysis and research needs to be performed and he is continuing such. In addition to what is continuing to be analyzed, items that could be, and may be performed, include:

- 1 • Analysis of past financial reports and financial condition, including revenue,
- 2 expenses, ownership loans and capital, bank transactions, payroll.
- 3 • Investigation into certain relationships and transactions with vendors and
- 4 suppliers.
- 5 • Analysis of transactions in determining whether preferences and possible
- 6 fraudulent conveyances exist or occurred.
- 7
- 8 • Further interview with other Company members.

9 Despite the financial condition of the Company and its past financial transactions there
10 are positive aspects of the Company. Included are some new customers and
11 distributors, and an additional QPL certification. Many LLC members and the employees
12 continue to think that the Company will be able to capitalize on the past efforts and
13 research of the Company. Recognizing that expenses can only be cut to such an extent,
14 it is incumbent upon the Company to increase revenues. Strategies are being
15 developed for such, with the assistance of employees.
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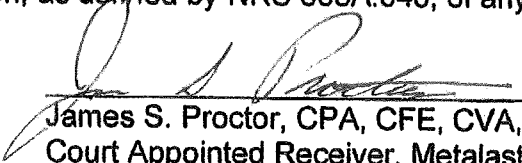
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18 Because of the short time period to date and the continued involvement of the
19 Receiver, and to limit the fees and costs, this Report is abridged and abbreviated, but
20 the Receiver is available to the Court for any additional questions or comments and this
21 report may be supplemented. Further, as additional analyses are performed, the
22 Receiver will file additional Status Reports. Because additional research and procedures
23 are continuing to be performed, the Receiver reserves the right to supplement this
24 Report.
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AFFIRMATION

Pursuant to NRS 239B.030, the undersigned hereby affirms that this document does not contain the Personal Information, as defined by NRS 603A.040, of any person.

Dated: June 12, 2013.


James S. Proctor, CPA, CFE, CVA, CFF
Court Appointed Receiver, Metalast
International, LLC

1 **CERTIFICATE OF SERVICE**

2 I, Zabett Buzzone, declare that:

3 I am over 18 years of age and not a party to, or interested in, the within entitled action. I am an
4 employee of Armstrong Teasdale, LLP located at 50 West Liberty Street, Suite 950, Reno, Nevada, 89501.

5 On June 13, 2013, I served the following document:

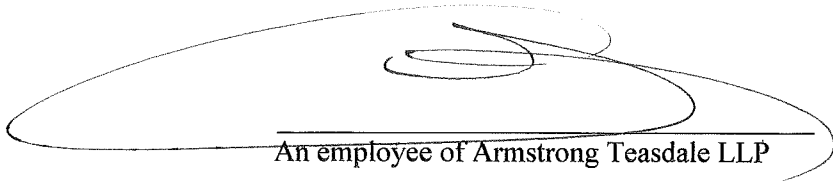
6 **RECEIVER'S FIRST STATUS REPORT**

7 [X] BY MAIL [N.R.C.P. 5(b)] I caused each envelope to be placed for deposit with the U.S. Postal Service in
8 a sealed envelope, with postage prepaid, and that each envelope was placed for collection and mailing on that
9 date following ordinary business. I am readily familiar with the business practice at my place of business for
10 collection and processing of correspondence for mailing with the U.S. Postal Service. Correspondence so
11 collected and processed is deposited with the U.S. Postal Service that same day in the ordinary course of
12 business. I am aware that on motion of the party served, service is presumed invalid if postal cancellation date
13 or postage meter date is more than one day after date of deposit for mailing in affidavit;

14
15 James S. Proctor, Receiver
16 Meridian Advantage
17 200 Ridge Street, Suite 240
18 Reno, Nevada 89501

15 Michael D. Rounds, Esq.
16 Watson Rounds
17 5371 Kietzke Lane
18 Reno, Nevada 89511

19 I declare under penalty of perjury under the laws of the State of Nevada that the above is true and correct.

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22 An employee of Armstrong Teasdale LLP
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